

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RODNEY L GARROTT,

Petitioner,

v.

PATRICK GLEBE,

Respondent.

CASE NO. C14-253 MJP

ORDER ON REPORT AND
RECOMMENDATION

The above-entitled Court, having received and reviewed

1. Report and Recommendation (Dkt. No. 21)

2. Petitioner's Objection to Magistrate's Report and Recommendation (Dkt. No. 36)

as well as all relevant portions of the court record (including the Administrative Record; Dkt. No. 18), rules as follows:

IT IS ORDERED that the Report and Recommendation is ADOPTED; Petitioner's habeas petition is DISMISSED with prejudice.

1 IT IS FURTHER ORDERED that, Petitioner having failed to make a substantial showing
2 of the denial of a constitutional right or demonstrate that reasonable jurists could disagree with
3 the dismissal of his petition, a Certificate of Appealability is DENIED.

4 **Discussion**

5 Both the factual and procedural history of this petition are detailed thoroughly in the
6 Report and Recommendation. (Dkt. No. 21 at 2-6.) The Court will not reiterate them here.

7 Petitioner makes two claims to habeas relief in the instant petition:

- 8 1. The violation of a Sixth Amendment right to effective assistance of counsel.
- 9 2. The violation of his due process rights as a result of the State's failure to resentence him
10 automatically and immediately based on the reversal of a previous conviction.

11 Petitioner is, in fact, not entitled to relief on either basis. He has failed to exhaust his
12 ineffective assistance of counsel claim. Because he chose not to challenge the effectiveness of
13 his legal assistance until many years after the fact (and then raised the issue for the first time in a
14 petition to the Washington Supreme Court), the claim was dismissed on procedural grounds and
15 thus was not properly exhausted. His objections present no argument that he was prevented from
16 raising the ineffectiveness issue in a timely manner nor any other defense to the procedural
17 default. He is not entitled to habeas relief on this claim.

18 The Report and Recommendation fully addresses Petitioner's argument that the State is
19 required, on its own, to search for sentences which have been impacted by the reversal of another
20 sentence and to automatically resentence a prisoner who has had a sentence reversed on appeal.
21 In the face of the R&R's assertion that there is no federal precedent which requires the State to
22 respond in this manner, Petitioner has offered no legal precedents which support his position.
23 His objections are a muddled amalgam of other case citations on unrelated issues and his total
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1 failure to offer any legal support for the issues he raises in his habeas petition is the final proof of
2 the invalidity of his claims.

3 Finally, the Court joins in the Magistrate Judge's conclusion that Petitioner has failed to
4 make a substantial showing of the denial of a constitutional right or demonstrate that reasonable
5 jurists could disagree with the dismissal of his petition. On that basis, the Court denies the
6 issuance of a certificate of appealability.

7 **Conclusion**

8 Petitioner presents no support, in either statute or case law, for the claims in his habeas
9 petition and it is DISMISSED with prejudice. The Court also declines to issue a certificate of
10 appealability in the face of Petitioner's failure to make a substantial showing of the denial of a
11 constitutional right or demonstrate that reasonable jurists could disagree with the dismissal of his
12 petition.

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14 The clerk is ordered to provide copies of this order to the Magistrate Judge, Petitioner,
15 and all counsel.

16 Dated this 10th day of April, 2015.

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20 Marsha J. Pechman
21 United States District Judge
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